

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

UNITED STATES OF AMERICA,

Plaintiff,

-vs-

CRAIG ALLEN MORGENSTERN,

Defendant.

No. 2:14-CR-0161-WFN

ORDER DENYING MOTION
FOR NEW TRIAL

An evidentiary motion hearing was held April 14, 2016. The Defendant, who is in custody, was present and represented by Bryan Whitaker; Assistant United States Attorneys Stephanie Lister and James Goeke represented the Government. Prior to the evidentiary portion of the hearing, the Court reviewed the allegations and asked the parties whether the presiding juror should be called to testify. The parties agreed that the Rules of Criminal Procedure forbid questioning regarding the deliberations as it related to the speed of the verdict. As that was the only topic that defense counsel intended to address with the presiding juror, the Court determined that he need not testify. The Court heard testimony from Jurors Two and Three regarding allegations that Juror Two slept through a portion of Dr. Thomas Satterfield's testimony.

Juror Three testified that while she did not recall which day it occurred, she did poke Juror Two during testimony when he was resting his head on his hand with his eyes closed. She indicated that she did not know whether or not he was asleep, but felt that it appeared inappropriate. Juror Two testified that he was not sleeping, but that he does sometimes listen with his eyes closed and may have done so on one or more occasion during the trial. Based on this testimony, the Court concluded that Defendant suffered no prejudice.

1 Based on the testimony, it appears that Juror Two remained wakeful and attentive
2 during the course of the trial. Even if Juror Two had briefly nodded off, and there is no
3 evidence that he did, the duration was brief and the testimony that he may have missed
4 would not have deprived Defendant of a fair trial.

5 Defense counsel informed the Court Defendant may request a continuance of the
6 sentencing date. The Government indicated that the victims oppose any continuance of the
7 sentencing as they would like closure and some may testify for the sentencing hearing.
8 The Court has reviewed the file and Defendant's Motion and is fully informed. This Order
9 is entered to memorialize and supplement the oral rulings of the Court. Accordingly,

10 **IT IS ORDERED** that:

11 1. Defendant's Motion for a New Trial, filed March 8, 2016, **ECF No. 131**, is
12 **DENIED**.

13 2. The **June 15, 2016, 9:00 a.m.**, sentencing hearing and sentencing filing
14 deadlines as set out in the Court's Order Re: Schedule for Sentencing, **ECF No. 130**, are
15 **CONFIRMED**.

16 The District Court Executive is directed to file this Order and provide copies to
17 counsel **AND TO** United States Probation Officer Shawn Kennicutt.

18 **DATED** this 19th day of April, 2016.

19
20 s/ Wm. Fremming Nielsen

21 WM. FREMMING NIELSEN
22 SENIOR UNITED STATES DISTRICT JUDGE
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